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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,469

03/29/2004

Anja Bauer

P30829

3148

7055 7590 08/04/2008  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER

JEAN-LOUIS, SAMIRA JM

ART UNIT

PAPER NUMBER

1617

NOTIFICATION DATE

DELIVERY MODE

08/04/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/812,469</p>	<p><b>Applicant(s)</b> BAUER ET AL.</p>	
	<p><b>Examiner</b> SAMIRA JEAN-LOUIS</p>	<p><b>Art Unit</b> 1617</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617

Applicant's arguments that Schreiber in view of Pescatore does not render obvious applicant's invention has been fully acknowledged but is not found persuasive. Schreiber teaches water-in-oil emulsion formulated as sticks comprising a lipid phase, a water phase, stabilizers and additional advantageous active ingredients including amino acid antioxidants such as glycine and chelating antioxidants such as lactic acids in an amount ranging from 0.001-30%. Regardless if the examples of Schreiber only teaches 2% glycine, Schreiber does render obvious applicant's invention as Schreiber et al. teach the addition of antioxidants in a range of 0.001-30%, a range that necessarily renders obvious applicant's range. Moreover, applicant is reminded that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). Consequently, to one of ordinary skill in the art, it would have been obvious to try any one of the antioxidant listed by Schreiber et al. in the aforementioned range given that Schreiber teaches their use for protecting the formulation and the skin against oxidative stress.

Applicant's arguments that Schreiber teaches the use of moisturizers for mostly lipcare sticks is fully acknowledged but is not persuasive. Schreiber teaches the use of antioxidants in any emulsion sticks for combating oxidative stress (see col. 13, lines 4-18). Moreover, applicant's argument that over 100 exemplary antioxidants are cited with no apparent teaching of specific antioxidants to be added is not persuasive as the rejection was rendered obvious and not anticipatory. Given that Schreiber teaches the use of antioxidants, and Schreiber teaches glycine and lactic acid as antioxidants, it would have been obvious to one of ordinary skill to try any of the disclosed antioxidants as Schreiber teaches them all as useful for protecting against oxidative stress.

Applicant's arguments that Pescatore, Butuc, and Fabrisi fail to cure the deficiencies of Schreiber is acknowledged but is not found persuasive. Pescatore was provided to demonstrate that cosmetic sticks can be made in a molten state at 65-85 (C) degrees and packaged at 10-50 (C) degrees. Pescatore further teaches that the product can be cooled (i.e. solidify) at a temperature at an area of 40 (C) degrees. Thus Schreiber in view of Pescatore does render obvious applicant's invention. Butuc was provided to demonstrate that cosmetic stick can contain ubiquinone and antiwrinkling agents for the purpose of altering appearances. Fabrisi was provided to demonstrate that sticks can be top-filled or bottom-filled and positioned in an inner tubular sleeve. Thus, Schreiber in view of Butuc or Schreiber in view of Fabrisi render obvious applicant's invention.

For the foregoing reasons, the rejection of record is maintained.